

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of Rules I through V	)	ON PROPOSED ADOPTION
pertaining to Medicare Part D	)	
Low Income Subsidies	)	

TO: All Interested Persons

1. On January 11, 2006, at 3:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I APPLICATION FOR MEDICARE PART D LOW INCOME PREMIUM AND COST SHARING SUBSIDIES (LIS) (1) There is a federal program known as extra help that provides low income subsidies (LIS) to qualified persons to pay medicare Part D prescription drug plan premiums and cost sharing.

(2) An individual who wishes to apply for LIS may do so using either a federal or a state LIS application. State offices of public assistance (OPA) must provide information on the LIS and its eligibility requirements and must provide assistance with completion of LIS application forms, both state and federal, when requested to do so.

(3) An individual may file an application for LIS by submitting an application to any state OPA or at a federal social security administration (SSA) office.

AUTH: Sec. 53-2-201, MCA  
IMP: Sec. 53-2-201, MCA

RULE II PROCESSING OF APPLICATIONS FOR LIS (1) If an individual submits an application on the federal form SSA-1020, the OPA will forward the form SSA-1020 to the SSA for processing.

(2) If an individual specifically requests that the state

rather than SSA process the individual's application for LIS, the OPA will give the individual a state application and the department will process the completed application.

(3) When processing an application that is submitted on the state form:

(a) The department will determine eligibility using the criteria contained in the regulation governing eligibility for low income subsidies at 42 CFR 423.773 (January 28, 2005), which is adopted and incorporated by reference, and using the income and resource criteria contained in the supplemental security income (SSI) regulations at 20 CFR, Part 416, subparts K and L, (November 1, 2005), which are adopted and incorporated by reference. Copies of 42 CFR 423.773 and 20 CFR, Part 416, subparts K and L, may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(b) The department will comply with the procedural requirements, including but not limited to the requirements for verification, documentation, and notice, applicable to a medicaid application as set forth in the department's SSI Medicaid Manual, also known as the Aged Blind Disabled Medicaid Manual, as incorporated by reference in ARM 37.82.101.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

RULE III EFFECTIVE DATE OF ELIGIBILITY FOR LIS (1) When an individual files an application on the state form and is found eligible for a subsidy, the effective date of eligibility will be determined as follows:

(a) Eligibility for a month will not be granted unless the applicant meets all eligibility requirements on the first moment of the first day of that month. Thus, eligibility begins on the first day of the month of application if the applicant meets all eligibility requirements as of the first moment of the first day of that month. If the applicant does not meet all eligibility requirements as of the first moment of the first day of the month of application, but meets all eligibility requirements at some later time during that month, eligibility will begin on the first day of the month immediately after the month of application.

(b) If the applicant does not meet all eligibility requirements at any time during the month of application, but meets all eligibility requirements in a subsequent month before the application is denied, eligibility will begin on the first day of the first month in which the applicant met all eligibility requirements as of the first moment of the first day of the month.

(c) There is no retroactive coverage for LIS. An applicant is not eligible for any month prior to the month of application even if the applicant met all eligibility requirements in a prior month.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

RULE IV REDETERMINATIONS OF ELIGIBILITY FOR LIS (1) When an individual submits an application on a state form and is found eligible for a subsidy, eligibility shall remain in effect for no more than one year.

(2) The department will conduct periodic redeterminations of the individual's eligibility in accordance with the requirements for redetermination of medicaid eligibility prescribed in the department's SSI Medicaid Manual.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

RULE V APPEAL PROCESS FOR LIS APPLICATIONS (1) When an individual submits an application on a state form and disagrees with the department's decision as to the individual's eligibility for a subsidy or the amount of the subsidy, the individual shall be entitled to a hearing to the same extent as provided to medicaid applicants and recipients in ARM 37.5.103.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

3. The Medicare Prescription Drug Improvement and Modernization Act of 2003 (the MMA) added prescription drug coverage to the Medicare program effective January 1, 2006. All Medicare beneficiaries will be able to enroll in a prescription drug plan. The Medicare beneficiary will pay a premium for drug coverage that will be approximately \$35 per month depending on the prescription drug plan chosen. Medicaid will pay the Medicare Part D premium for individuals who are eligible for both Medicaid and Medicare.

Additionally, the federal government has a program known as Extra Help to provide a low income subsidy (LIS) to Medicare beneficiaries with limited income and resources who do not qualify for Medicaid. The low income subsidy provides assistance with the Part D premium, deductible, and copayments. To qualify for Extra Help an individual must have countable income below 150% of the federal poverty level and countable resources below \$11,500 for one person and below \$23,000 for a couple.

Although the Medicare Part D low income subsidy is 100% federally funded, the federal regulations implementing LIS at 42 CFR 423.771, et seq., require states as well as the Social Security Administration to accept and process applications for LIS. 42 CFR 423.904 provides that the states must have a state LIS application in addition to the federal application form and that the states must accept both federal and state applications for LIS. 42 CFR 423.774 provides that the state must process the LIS application if the applicant requests that the state rather than the SSA do so. 42 CFR 423.774 and 42 CFR 423.904

require states to conduct periodic redeterminations of eligibility in cases where the state makes the initial eligibility determination. 42 CFR 423.774 also provides that the state must have an appeal process for LIS determinations made by the state which is conducted in the same manner as appeals for Medicaid applicants and recipients.

The adoption of Rules I through V is necessary to implement the provisions of the MMA, and to set forth the requirements and provisions of the program for members of the public who may be eligible to receive the benefits of this program, so that they may readily understand the procedures involved and the eligibility requirements. Rule I provides that a LIS application can be submitted in any state office of public assistance. Rule II specifies the procedures to be followed in processing applications depending on whether the application is submitted on a federal or state form.

Rule III specifies the effective date for coverage, which is based on the SSI regulation that provides for coverage beginning on the first day of the month in which the applicant meets all eligibility criteria as of the first moment of the first day of the month. Rule III provides that there is no retroactive coverage for months prior to the month of application, because the LIS regulations do not provide for retroactive coverage. This is contrary to the Medicaid policy, which provides for retroactive coverage of up to three months prior to the month of application.

Rule IV provides for redeterminations of eligibility at least annually.

Rule V provides that an applicant who disagrees with the Department's decision on eligibility for the subsidy or the amount of the subsidy is entitled to the same appeal rights granted to Medicaid applicants and recipients in ARM 37.5.103.

SSA has mailed 75,544 applications for Extra Help/LIS to Montana residents who are potentially eligible for this new program. The monthly subsidy amount is \$33.11. Thus, if all 75,544 persons applied and qualified for a subsidy, the cost of the subsidies for a year would be \$30,015,142.08. Fewer than 13,000 applications have been returned to SSA at this time, however, and no applications have been submitted to the Department for processing. It is probable that all of the persons who received applications will not return the applications and/or will not qualify for the subsidy, so the total cost will likely be less than \$30,015,142.08 per year. The subsidies are funded 100% with federal money. No state General Fund dollars will be used to pay for the subsidies.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva,

Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 19, 2006. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 28, 2005.